

REMARKS

Entry of the foregoing prior to examination on the merits is respectfully requested.

By the present amendment, claims 1-9, 12, and 14-28 have been canceled without prejudice or disclaimer of the subject matter described therein. Claims 29-36 have been added. Claims 29-36 recite embodiments of the elected invention that are described throughout the specification, with particular reference to the detailed description of the invention on pages 8-28.

Claims 10 and 13 have been amended to strike “unpackaged, naked dsRNA or siRNA” and to insert instead, “dsRNA or siRNA without a transfection promoting agent” as described at page 14 of the specification.

Pages 2-3 of the Office Action mailed May 19, 2008 set forth a restriction requirement enumerating Groups I – VII. Applicants elect Group II, directed to a method of silencing a gene of a plant sap-sucking insect by applying unpacked or naked dsRNA or siRNA targeting an essential gene of a plant sap-sucking insect to feed of the insect. However, the requirement is respectfully traversed for the reasons set forth below.

The Office has contended that the claims of “Groups I-XI (*sic*) do not relate to a single general inventive concept under PCT Rule 13.1.” In making this contention, the Office has alleged that Tobias et al. (WO 01/37654) anticipated a technical feature of the enumerated groups. The restriction requirement is traversed, because contrary to the allegation of the Office, Tobias et al. did not describe and enable silencing of sap-sucking insects genes, nor conferring insect resistance to sap-sucking insects by providing dsRNA or siRNA having substantial sequence identity to an essential gene of a sap-sucking insect so as to have placed the public in possession of the special technical features shared by the original claims of the application. Tobias et al. does not demonstrate RNA interference in insects

after uptake of dsRNA or siRNA by feeding, and particularly not with respect to sap-sucking insects. Applicants submit that the speculative disclosures of Tobias et al. could not have placed the public in possession of the invention.

Because Tobias et al. failed to place the public in possession of the special technical features of the claims, the requirement is improper and should be withdrawn. Nevertheless, simply in order to expedite examination, and to reduce fees for the addition of claims 29-36, claims 1-9 and 14-28 have been canceled in accordance with the election set forth herein. Claim 12 has also been canceled as the claim did not properly depend from non-canceled claim 10. Applicants reserve the right to reintroduce the canceled claims in this application in the event that the restriction requirement is withdrawn.

Further, in accordance with the additional requirements set forth on pages 3-4, Applicants elect SEQ ID NO:5 (DNA sequence of an eIF1A gene fragment), which is a eukaryotic translation initiation factor 1A sequence as recited in claim 2. In view of the election of Group II, applicants believe that it is unnecessary to elect a promoter from among those recited in original claim.8.

The requirement of an election of species is separately traversed. Applicants respectfully submit that the requirement of a species election is not proper in a national stage application where the PCT unity of invention rules are applied. On page 5 of the Office Action, it is stated that upon allowance of a generic claim, applicant will be entitled to consideration of additional species which depend from or otherwise require all the limitations of an allowable generic claim. Applicants respectfully submit that under the unity of invention standards applicable in a national stage application, the order is reversed. If a generic claim is found allowable, then claims depending therefrom must necessarily possess

unity of invention. That is, applicants are entitled to examination of any elected generic claims and any species that share a special technical feature of an allowable generic claim.

CONCLUSION

In view of the foregoing, further and favorable action in the form of a Notice of Allowance is believed to be next in order. Such action is earnestly solicited.

In the event that there are any questions relating to this application, it would be appreciated if the Examiner would telephone the undersigned concerning such questions so that prosecution of this application may be expedited.

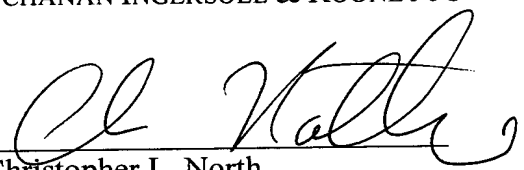
The Director is hereby authorized to charge any appropriate fees that may be required by this paper, and to credit any overpayment, to Deposit Account No. 02-4800.

Respectfully submitted,

BUCHANAN INGERSOLL & ROONEY PC

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